FIFTH DIVISION
July 24, 2015

No. 1-13-1782

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 11843
	)	
MANUEL ACEQUEL,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence sufficiently proved beyond a reasonable doubt that defendant intended to damage a garbage can where a witness testified that he lit the trash inside the can on fire and then walked away.

¶ 2 Following a bench trial, defendant Manuel Acequel was found guilty of attempt arson and sentenced to five years' incarceration. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he intended to damage two garbage cans when he lit their contents on fire. He also contends that a $250 "State DNA ID system" fee assessed against him

must be vacated because his DNA was already within the State's database. We affirm and correct the fines and fees order.

¶ 3 At trial, Keith Galloway testified that he was waiting at a Chicago bus stop early on the morning of June 8, 2012. Across the street, defendant bent down into a garbage can and then walked away from it. As defendant continued down the street, smoke and flames began to rise from the garbage can. He approached another garbage can and bent down into it. Again, flames and smoke rose from the can as defendant walked away. He left the can, approached a doorway, and lay down. Galloway called 9-1-1 and firefighters arrived within "three to four minutes."

¶ 4 John Bieg, a Department of Streets and Sanitation employee, testified that one of the garbage cans involved was a wire basket worth $132. The second can was a "decorative basket" worth $638.

¶ 5 Defendant testified that he was sleeping on the street around midnight on June 8, 2012. He awoke when a police officer put his foot on him and handcuffed him. He did not approach the garbage cans that night, and did not set any fires. Defendant was impeached with multiple prior felony convictions.

¶ 6 The trial court found defendant guilty of attempt arson and sentenced him to five years' incarceration. The court also assessed fines and fees against defendant totaling $679, including a $250 "State DNA ID system" fee.

¶ 7 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of attempt arson. Particularly, he argues that the State failed to sufficiently prove that he intended to damage the garbage cans when he lit the trash inside on fire. He notes that the State presented no direct evidence of his intent and no evidence that the trash cans were in fact

damaged. He also posits that there are several potential motives for lighting the trash which would not support a conviction for attempt arson. The State responds that it presented sufficient circumstantial evidence to prove defendant's intent beyond a reasonable doubt.

¶ 8 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279.

¶ 9 An individual commits arson when he or she knowingly damages any personal property of another worth $150 or more by means of fire or explosion. 720 ILCS 5/20-1(a)(1) (West 2012). An attempt offense occurs when an individual (1) takes a substantial step towards the commission of an offense (2) with intent to commit that offense. 720 ILCS 5/8-4(a) (West 2012). When a defendant is charged with attempt arson, the State must prove that that the defendant intended to damage the involved property by means of fire. *People v. Rincon*, 387 Ill. App. 3d 708, 723 (2008). On appeal, defendant does not contest that he took a substantial step towards

committing arson. We focus our analysis on the decorative garbage can because the wire can's value is below the personal property value required to prove arson. See 720 ILCS 5/20-1(a)(1) (West 2012)

¶ 10 The State may prove a defendant's intent by circumstantial evidence. *People v. Moreira*, 378 Ill. App. 3d 120, 129 (2007). It is presumed that an individual intends "all the natural and probable consequences" that flow from his or her deliberate actions. *People v. Smith*, 402 Ill. App. 3d 538, 547 (2010).

¶ 11 Taking the evidence in the light most favorable to the prosecution, a rational fact finder could find beyond a reasonable doubt that defendant intended to damage the garbage can when he lit its contents on fire. A fire's natural and probable consequence is to cause damage to items not specifically designed to withstand flame. This damage can be as extensive as an object's complete destruction or as minor as its warping or the melting of its paint. We note that arson does not require proof of significant damage; proof of any damage will suffice. See *People v. Lockwood*, 240 Ill. App. 3d 137, 145 (1992). A fact finder could reasonably infer from Galloway's testimony that defendant deliberately started a fire in the decorative garbage can. The can was manufactured for the purpose of containing refuse, not for containing and withstanding the heat of a fire. It was not a heavy-duty drum, but rather was painted and decorative. A reasonable fact finder could infer that, given time, the heat of a fire would naturally and probably scorch, warp, or otherwise damage the can. Therefore, we presume that defendant intended the probable consequence of his actions, particularly, that the garbage can would be damaged.

¶ 12 Defendant argues that a fire would not naturally and probably damage a metal can. He notes that barbecue grills are often made of metal as are the drums that the city provides for the

purpose of hot coal disposal. This argument is unpersuasive. Grills and coal drums are specifically made for the purpose of containing heat and flame; decorative garbage cans are not. The trial court was able to examine the photographs of the can in question and note its construction. It could reasonably infer that damage was a natural and probable consequence of defendant's fires.

¶ 13 Furthermore, Galloway's testimony suggests that defendant had no practical intentions underlying his actions. He did not warm himself at either fire, or cook anything over either can. Galloway testified that defendant set both fires and immediately walked away. Where it appears defendant had no other motive for setting the fires, we are left only with our presumption that he intended the natural and probable consequences of his acts. Hence, taking the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant intended to damage the garbage cans.

¶ 14 Defendant next contends that the trial court erred by assessing a $250 "State DNA ID System" fee against him under section 5-4-3(j) of the Unified Code of Corrections, (730 ILCS 5/5-4-3(j) (West 2012)), because his DNA was already on file in the State's database. The State concedes that the fee should be vacated and we accept the State's concession. The "State DNA ID System" fee cannot be assessed against a defendant whose DNA is already on file. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Defendant was previously convicted of a felony and we may presume he submitted a DNA sample to the State. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Accordingly, we vacate the fee and order the correction of the fines and fees order to reflect a total amount owed of $429.

¶ 15 For the foregoing reasons, we find that the State sufficiently proved beyond a reasonable doubt that defendant intended to damage a city garbage can when he lit the trash inside it on fire. We also find defendant's fines and fees order to be in error. Accordingly, we vacate the "State DNA ID System" fee, order the circuit court clerk to correct defendant's fines and fees order to reflect a total owed of $429, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 16 Affirmed; fines and fees order corrected.